PUBLIC PROSECUTOR v. LEE TUAH SUAH.

[Criminal Revision (Taylor, J.) December 4, 1947]

Opium and Chandu Proclamation (No. 49) S. 9 (1) — Accused charged with being owner of vessel used for exportation of opium — Meaning of 'export' — Transfer of Powers and Interpretation Ordinance S. 15.

In this case the appellant had been convicted of being the owner of a vessel used for the exportation of opium, an offence punishable under S. 9 (1) of the Opium and Chandu Proclamation. The facts were that the vessel proceeded down the Malacca river bound for a foreign port and on being stopped at the Customs examination station at the mouth of the river was found to have on board a quantity of opium concealed under sacks. The owner was not on board the vessel.

Held, (1) that the definition of the word "export" in the Transfer of Powers and Interpretation Ordinance S. 15 as meaning "to take or cause to be taken out of the Malay Peninsula by land, sea or air" is narrower than the ordinary meaning of the word so that in this case the process of exportation had not commenced when the vessel moved down the river towards the open sea; (2) that consequently an attempted exportation only had taken place and as the Opium and Chandu Proclamation does not provide that an owner shall be deemed to have committed an offence if the vessel is used by someone else for such an attempt, the conviction of the owner in this case must be quashed.

CRIMINAL REVISION.

Atkinson for the Appellant.

Kilner (Crown Counsel) for the Respondent.

Taylor, J. : — This is an Appeal, by way of case stated, from a determination by the learned District Judge at Malacca who convicted the Appellant of being the owner of a vessel used for the exportation of opium, an offence punishable under Section 9, sub-section 1 of the Opium Proclamation 1946 (No. 49).

The facts were that the vessel proceeded down the Malacca river bound for a foreign port and being stopped at the Customs examination station at the mouth of the river was found to have on board a quantity of opium concealed under sacks.

The owner was not on board but was unable to prove that he was not concerned with the opium and he was therefore rightly convicted, the onus of proof being shifted on to him by the express words of the section, if what was done amounted to exportation.

The principal contention for the Appellant was that Section 9 of the Proclamation under which he was charged only makes the owner of the vessel liable where the vessel has been used for the actual exportation of opium, meaning a completed act of exportation, and although an attempt to export is an offence the Proclamation does not provide that the owner shall be deemed to have committed an offence if the vessel is used by somone else for such an attempt.

It was also argued, and I think rightly, that since Section 9 imposes a criminal liability on a person who may have no actual knowledge of the offence for which he is to be punished, the Section is one which, on principle, should be construed strictly in favour of such a person.

Counsel for the Appellant also referred to the Transfer of Powers and Interpretation Ordinance, Section 15 of which provides that the word "export" with its grammatical variations and cognate expressions shall mean "to take or cause to be taken out of the Malay Peninsula by land, sea or air". The attention of the trial judge does not appear to have been drawn to this definition. He held that the process of exportation had commenced when the vessel moved down the river towards the open sea and that the vessel had therefore been used for the exportation of opium within the meaning of the section.

Counsel for the Public Prosecutor argued that if a ship had cleared and was going down the river, those in charge clearly intending to leave the territorial waters, the offence of using the ship for exportation would have been completed. He submitted that if a ship must actually cross the territorial limit before exportation could be said to be complete, that would involve anomalous, if not ridiculous, results.

As a matter of ordinary English usage I am inclined to think that "exportation" would be held to mean the act of carrying out of the country and that at any rate once the ship had cleared and it was no longer possible for the shipper of goods in the ship to stop them, the shipper would be said to have exported the goods but in my view the Statuory definition of export and exportation which applies to this Proclamation is narrower than the ordinary meaning of the words. For this reason I think that the appeal must be allowed and the conviction quashed.

Appeal Allowed.

TAN YEE MOH v. VARTHAMAL.

[App. Civil Juris. (Evans, J.) December 10, 1947]

Rent and Charged Land (Restriction) Enactment — Action for ejectment — Allegation that rent was in arrears for more than fourteen days — Place where rent is due and payable.

This was an appeal from an order of ejectment made by the District Judge. At the trial it was alleged by the plaintiffs the landlord of the premises that the rent had been in arrears for more than fourteen days. The defendant who was the tenant denied that rent was lawfully in arrears, alleging that no demand had been made at the premises leased, and that he was unaware of the plaintiff's address.

Held, (1) that the general rule that the debtor must seek out his creditor does not apply in the case of rent which is in general due on the land demised; (2) that on the facts the plaintiff had failed to prove that the rent was in arrears, so as to take the case out of the Rent and Charged Land (Restriction) Enactment.